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CAUSE NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

DONALD CHARLES OLSON, JR., D.O.,

PETITIONER,

V.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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98 pp

EDITOR'S NOTE:

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the evidence was sufficient to establish intent and knowledge and to find Petitioner guilty of conspiracy to distribute without legitimate medical purpose.

2. Whether the evidence was sufficient to establish intent and knowledge and to find Petitioner guilty of distribution without legitimate medical purpose and not in the course of professional practice.

3. Whether the remarks of the prosecutor and the Trial Court's failure to admonish the jury or properly instruct the jury regarding testimony about a co-defendant's plea of guilty unduly prejudiced the Petitioner.

4. Whether the Trial Court erred in determining the existence of a conspiracy without sufficient independent evidence and thereby improperly allowed co-conspirator testimony.

5. Whether the sentences imposed by the Trial Court are improper and excessive.

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IN THE SUPREME COURT OF THE UNITED STATES

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DONALD CHARLES OLSON, JR., D.O.,
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UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Petitioner was convicted by a jury in the United States District Court for the Eastern District of Oklahoma, Honorable Frank H. Seay presiding, in Case No. 85-57-CR of 144 counts of illegally dispensing drugs and one count of conspiracy. A copy of the judgment and sentence of said court is attached as "Appendix A".

Petitioner appealed the judgment and sentence of the federal district court to

the United States Court of Appeals for the Tenth Circuit, Case No. 85-2893, which affirmed the judgment on 8 January, 1987. A copy of the court's Order and Judgment is attached as "Appendix B".

The Petitioner then filed to the Court of Appeals for rehearing which was denied on 23 February, 1987. A copy of the order is attached as "Appendix C".

JURSIDICTION

The judgment of the Court of Appeals for the Tenth Circuit was entered on 8 January, 1987. A timely Petition For Rehearing was filed and was denied on 23 February, 1987. Jursidiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

CONSTITUTIONAL PROVISIONS

Sixth Amendment, United States Constitution.

Fifth Amendment, United States Constitititution.

21 U.S.C. §846.

21 U.S.C. §846.

21 U.S.C. §841 (a) (1).

21 U.S.C. §841 (B).

See "Appendix E" for a full citation.

STATEMENT OF THE CASE

On August 9, 1985, there was filed an Indictment against the Petitioner. Motions were filed by the Petitioner for dismissal of the Indictment, for a bill of particulars, and for severance, all of which were denied by the trial court. The witnesses presented by the Government were a state narcotics officer, five former patients of the Petitioner, a doctor specializing in internal medicine and cardiology and an associate professor of pharmacology. During the trial, Petitioner presented various motions for mistrial, finding of no conspiracy, and motions to dismiss which were all overruled. The prescriptions of the

Petitioner to the patients who testified were introduced into evidence along with patient files of each witness and other co-defendants. The doctor and pharmacologist testified from copies of the records of the Petitioner. Petitioner took the stand and testified as to his training, practice, records, the patients' medical problems and office visits. After motions to dismiss, for mistrial and objections to instructions were overruled, the Court then instructed the jury. After argument of the counsel, the jury retired and found the Petitioner guilty of the one count of conspiracy and 144 counts of Unlawfully Dispensing Controlled Substances Not for a Legitimate Medical Purpose. Petitioner was sentenced thereon to a total of 21 years (including consecutive and concurrent sentences entered on various counts) and also to a special probation term. Petitioner was

found not guilty on 17 counts of Title 21 U.S.C §841 (a) (1).

Petitioner appealed to the United States Court of Appeals for the Tenth Circuit which, after briefing and oral arguments, affirmed the convictions on 8 January, 1987. Petitioner filed for rehearing which was denied on 23 February, 1987.

STATEMENT OF FACTS

The Petitioner was a Doctor of Osteopathy in the general practice of medicine, in Tahlequah, Oklahoma since 1973 except for a short period of time during 1980 when he worked for the government at Tinker Air Force Base, Midwest City, Oklahoma. He was registered to dispense the controlled substances alleged to have been abused. Petitioner first became acquainted with co-defendant, David Vernon May who was the son and stepson, respectively, of two of

Petitioner's longtime patients, Tessie and Xerxes Cooper. May became a patient of Petitioner along with his wife and children. The Mays presented various medical ailments to the Petitioner during their physician-patient relationship including obesity, weight control, broken bones, back problems, laryngitis, sore throats, etc. The Petitioner prescribed various drugs and apparatus' for their use and treatment including controlled substances. The Mays never used the controlled substances from their prescriptions but sold or traded them for drugs they did use. The Mays never informed Petitioner of their failure to utilize their prescriptions themselves, of their selling or trading of the drugs he had prescribed, of their selling activities in the vicinity of his office nor never made any agreements with him regarding his furnishing of prescription

medicines for their distribution. The Mays brought to Petitioner some fellow drug abusers, Glenn and Carolyn Conrad. Petitioner saw these individuals as regular patients and treated them for obesity, weight control, pain and various other medical problems. The Conrads were also selling or trading their prescription medicines from Petitioner for drugs of their choice. The Conrads testified that Petitioner did not know what they were doing with his prescriptions. Terry Ray Lyons, another co-defendant and patient of Petitioner sold or traded his drugs prescribed by the Petitioner. Lyons stated the Petitioner did not know that Lyons was doing this.

In treating these patients, the Petitioner saw them at regular intervals, had them fill out a health questionnaire on their initial visit, had them weighed, blood pressure checked, occasionally a

temperature check, and then placed in an examining room for consultation and treatment. He reviewed their medical chart upon going to their examining room, questioned them about their medical problems, and when he deemed necessary, sent them for further examination to other medical practitioners for x-rays, urinalysis, blood tests, etc. The treatment of various medical problems of these patients over the period of years covered by the Indictment resulted in the accumulation of a large number of prescription drug units for controlled substances which the patients were selling or trading. These patients paid Petitioner no renumeration other than the usual and customary charge in his community for an office visit which was often charged on account and never paid.

In August of 1985, an indictment was brought against Petitioner, a jury trial

held and Petitioner convicted and sentenced.

REASONS FOR GRANTING THIS WRIT

I

The Court should grant Certiorari to consider whether the evidence was sufficient to establish intent and knowledge and to find Petitioner guilty of conspiracy to distribute without legitimate medical purpose.

The only probative evidence concerning Petitioner's membership in a conspiracy results from his doctor-patient relationship.

At a minimum, the Government must have proved that Petitioner knew the drugs from his prescriptions were in fact being sold or traded. Petitioner thereby would have been part of a conspiracy because he would have been possessed with intent that drugs be distributed other than for legitimate medical purposes. Petitioner

should only be held for such acts of known conspirators when the acts are known to him and intended by him.

> "It is not enough if the defendant takes certain actions which 'tend to establish his connection with the conspiracy,' an agreement must be shown." U.S. v. Blessing, 727 F.2d 353 (5th Cir. 1984).

A conspiracy had been defined as a combination of two or more persons acting in concert to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means. The evidence to convict one of conspiracy must show circumstances to warrant a jury finding that the conspirators had a unity of purpose or a common design and understanding. American Tobacco Co. v. United States, 328 U.S. 781, 810, 66 S.Ct. 1125, 1139, 90 L.Ed. 1575 (1946). In conspiracy prosecution, the critical inquiry is whether the circumstances, acts and conduct of the parties are of such a character that the minds of reasonable

men may conclude therefrom that an unlawful agreement exists. United States v. Butler, 446 F.2d 975, (10th Cir. 1971); Nolan v. United States, 423 F.2d 1031, 1047 (10th Cir. 1969), cert. denied, 400 U.S. 489, 91 S.Ct. 47, 27, L.Ed.2d 85 (1970); Jones v. United States, 251 F.2d 288, (10th Cir.), cert. denied, 356 U.S. 919, 78 S.Ct. 703, 2 L.Ed.2d 715 (1958). The conspiracy is complete "when one or more of the conspirators knowingly commit an act in furtherance of the object of the agreement." United States v. Thomas, 468 F.2d 422 (10th Cir. 1972), cert. denied, 410 U.S. 935, 93 S.Ct. 1389, 35 L.Ed.2d 599 (1973). The evidence in this case did not show that Petitioner knew a conspiracy to possess controlled substances with intent to distribute existed and that he knowingly participated in the conspiracy.

Principal prosecution witness and co-defendant David May states that to his

knowledge, the Petitioner did not know he (David May) was selling or trading drugs.

Terry Lyons, Glen Conrad, Peralyn Conrad, and Loretta May stated nothing other than to confirm the statement of David May that the Petitioner, to their knowledge, did not know they were selling or trading their prescription drugs.

To be guilty of conspiracy, a defendant must possess "at least the degree of criminal intent necessary for the substantive offense itself." Ingram v. United States, 360 U.S. 672, 79 S.Ct. 1314, 3 L.Ed.2d 1503 (1959). The defendant lacks the requisite criminal intent if he does not know the conspiracy's objective. Direct Sales Co. v. United States, 319 U.S. 703, 63 S.Ct. 1265, 87 L.Ed. 1674 (1943). The Government must show the Petitioners' knowledge by clear, unequivocal evidence. Direct Sales Co., 319 U.S. at 711, 63

S.Ct. at 1269:

> "This court has often noted that the essence of the crime of conspiracy is an agreement to violate the law." Carter v. United States, 333 F.2d 354 (10th Cir.) ". . . mere knowledge or approval or acquiesence in the object and purpose of a conspiracy without an agreement to cooperate in achieving such object or purpose does not make one party to a conspiracy. Jones v. United States, 365 F.2d 87 (10th Cir.).
> As the Supreme Court has warned, however, caution must be taken that the conviction not be obtained 'by piling inference upon inference.' Direct Sales Co. v. United States, 319 U.S. 703, 63 S.Ct. 1265, 87 L.Ed. 1674.

It must have been shown that Petitioner was a member of a conspiracy to aid and abet the distribution of controlled substances, and that he was not merely aiding and abetting a conspiracy to distribute such substances. It is Petitioner's contention that the last is the most likely thing he could have done and that if he did it, he did it unknowingly.

> "As we noted in United States v. Perry, 643 F.2d at 46-47, there is an

> important difference between 'punishing an agreement to commit an act intended to aid another crime (a 'conspiracy to aid and abet'" and imposing conspiratorial liability on one who, without agreement, merely assists conspirators in achieving their object (an 'aiding and abetting of a conspiracy')'" United States v. Orozco-Prada, 723 F.2d 1076 (1984).

The elements of conspiracy not being present negates this conviction. There was shown no agreement by the Petitioner to be a party to a conspiracy. There was shown no knowledge on his part of the use of his prescriptions for other than legitimate purposes. There was shown no intent on the part of the Petitioner to participate in the criminal act of conspiracy with anyone to distribute or dispense controlled substances without legitimate medical purpose or outside the course of his professional practice. All alleged co-conspirators were patients who complained of medical problems whose treatment the prescriptions issued. Nothing further was established by the

government at trial. Conspiracy cannot be found from such actions, and the convictions should be reversed.

II

The Court should grant Certiorari to consider whether the evidence was sufficient to establish intent and knowledge and to find Petitioner guilty of distribution without legitimate medical purpose and not in the course of professional practice.

In order to obtain a conviction under 21 U.S.C § 841 (a) (1) against the Petitioner, the Government must have proved:

(1) The Petitioner distributed a controlled substance;

(2) That he acted intentionally or knowingly; and,

(3) That Petitioner prescribed the drugs without legitimate medical purpose and outside the usual course of

professional practice.

Petitioner testified he had no knowledge that his patients were selling or trading their prescription drugs. The testimony of the patients at trial indicates that, as far as they knew, Petitioner never knew they were selling or trading their drugs. The Schedule II drugs prescribed by Petitioner are narcotic and non-narcotic substances which have currently accepted medical use in treatments in the United States.

Witness David May testified that he was a user and abuser of drugs from 1973 (long before he ever saw Petitioner) to 1983. His drug of choice was Dilaudid which Petitioner never prescribed for him because he did not have a good enough reason. May testified about office procedures, conversations with the Petitioner and that he always gave a medical problem to the Petitioner but only

on occasion was the problem really a legitimate problem. Apparently, being legitimate or not made no difference to May since even when it was legitimate problems, he still sold or traded the medication for his drug of choice. Medical indications are shown in Petitioner's files and by the testimony of these individuals that they convinced Petitioner of a legitimate medical problem. Petitioner did not introduce any of the patients to one another. His only contact with them was in his office or in the hospital as individual patients.

Government witness Dr. Todd testified the prescriptions could be considered to be "in excess" and prescribed "inappropriately" which could be considered poor judgment but that poor judgment was not a crime. He also confirmed his opinion was based only on the review of Petitioner's patient files

which he considered insufficient.

Joseph Zubik, an assistant professor of pharmacology, stated the drugs prescribed were not proper and in excess of suggested dosages for the medical problems indicated and the extended time periods of treatment indicated. Zubik, like Todd, based his opinion solely upon a review of Petitioner's patient charts without examining the patients or their other doctor's and hospital records. In fact, Zubik could not examine any patient since he was not a medical doctor. Zubik did admit the drugs prescribed could be used for the problems of these patients as shown in Petitioner's records, but did not agree with the choice of the particular drug, quantity or duration of use.

The Government asserted that the Mays improperly received prescriptions from Petitioner for Tessie and Xerxes Cooper and either sold or traded them. The Mays

testified Petitioner did not know that they were selling or trading these drugs either. Petitioner testified that, his being a family oriented practice of osteopathy, and the Mays, being members of the family of Tessie and Xerxes Cooper, the ultimate user was the recipient of the prescriptions. See 21 U.S.C. §801(26) and United States v. Bartee, 479 F.2d 487 (10th Cir., 1973).

The statute which is alleged was violated by Petitioner, contains no definition for legitimate medical purpose.

> "In making a medical judgment concerning the right treatment for an individual patient, physicians require a certain latitude of available options." Doe v. Bolton, 410 U.S. 179, 93 S.Ct. 739, 747, 35 L.Ed.2d 201 (1983).

Petitioner exercised the discretion that his education, training, experience and personal contact with the patients and their medical problems should allow.

The quantity, dosages and frequency

of prescriptions are matters that an individual physician could only know from examination of the patient, a continuing relationship with the patient, care of various medical problems of the patient over a long period of time and by then using his studied and practiced art of healing to live up to his oath to treat patients and relieve their pain. Such only is shown by the record herein and there is not sufficient evidence to support the convictions and they should be reversed.

III

The Court should grant Certiorari to consider whether the remarks of the prosecutor and the trial court's failure to admonish the jury or properly instruct the jury regarding testimony about a co-defendant's plea of guilty unduly prejudiced the Petitioner.

The Government's case was based

principally on the testimony of co-conspirator and co-defendant David May. May entered a plea of guilty to Court I of the Indictment (the conspiracy count) a few days before the Petitioner's trial began. In its opening statment and without cause, the Government first brought to the jury's attention May's guilty plea. "You will also have evidence that David Vernon May has previously entered a plea of guilty last Thursday in this case, and we will discover that, pursuant to a plea agreement with the United States." The trial court gave no admonition to the jury concerning the effect of a co-defendant's guilty plea on Petitioner's case.

At the beginning of the Government's direct examination of its first witness, May, the prosecutor inquired about his plea of guilty.

"Q. Are you the same David May who entered a plea of guilty to Count 1 of

this indictment on October 3rd, 1985, which would be last Thursday?
A. I am."

The trial court gave no admonition to the jury.

In the closing argument by the Government, again they brought up May's guilty plea. "What did David May have to gain? He has pled guilty to the conspiracy, to Count One." Still, no admonition from the trial court.

In the rebuttal portion of the Government's closing argument, the prosecutor dropped all pretense regarding the real reason for May's testimony -- to transfer David May's guilt to the other defendants:

> "Ladies and gentlemen, there is another old adage that you might have heard of, and that is, "Birds of a feather flock together." Where was that covey flocking while they were heading to Tahlequah all year around?" TR., Vo. IV, pages 926-927.

No admonitions were given by the trial court concerning guilty pleas by

co-defendants. Only general instructions were given.

The Court also had it specifically brought to its attention when the Government wanted to use May's guilty plea as independent evidence of a conspiracy to be able to use co-conspirator heresay testimony. The Court did not accept this, and it was supposedly out of the hearing of the jury at a sidebar hearing in the courtroom before the jury, but it does go to show the underlying intent of the Government's referenced to the guilty plea of its principal witness and the great weight it put on such plea:

> "Mr. Hess: Your Honor, the federal rule of 801(d)(2) allows the admission in declarations of co-conspirators that are made in furtherance of the conspiracy and during its pendency, and establish that David May is a member and was -- previously pled guilty to the conspiracy that this charge involves." TR., Vol. I, page 148.
> "Mr. Hess: . . . Your Honor, Mr. May has testified that he conspired pursuant to the language in Count I and entered a plea last Thursday

knowingly and intelligently.
The Court: The plea won't make any difference. I want to know what evidence there is." TR., Vol. I, page 229.

When testimony of a guilty plea from a co-defendant for the same charge for which the Petitioner is on trial is brought before the jury, the Court must be careful to admonish the jury a that time that the evidence is for limited purposes of credibility only and then should give a specific instruction thereon to the jury at the close of the case. In this case, no instruction was given.

The law is clear. A co-defendant's guilty plea may not be used as substantive evidence of Petitioner's guilt. There was undue emphasis given the guilty plea throughout the trial and especially in closing arguments. The Court gave no admonitions or instructions limiting the use of such guilty plea to co-defendant's credibility. Even though no objection was

made by Petitioner, this Court should take notice of the plain error affecting the substantial rights of the accused because of the potential for prejudice, especially in a conspiracy case. United States v. Baez, 703 F.2d 453 (10th Cir. 1983). Fed. R. Crim. P. 52(b). United States v. Halbert, 640 F.2d 1000 (9th Cir. 1981).

For the reasons, facts and law above stated, the convictions should be reversed.

IV

The Court should grant Certiorari to consider whether the trial court erred in determining the existence of a conspiracy without sufficient independent evidence and thereby improperly allowed co-conspirators' testimony.

Near the end of the first day of trial after several objections had been sustained to co-conspirator heresay

testimony, another such statement was elicited from the witness May by the Government. Upon objection by the Petitioner, the Government asked for a finding of conspiracy. After argument by the counsel, the Court entered a finding that by substantial independent evidence a conspiracy existed and therefore co-conspirator heresay testimony became admissable.

It is Petitioner's contention that there was no independent evidence of a conspiracy at that time from the testimony. The cases regarding the point at which the Court may find by independent evidence the existence of a conspiracy before admitting heresay is established in United States v. Petersen, 611 F.2d 1313 (10th Cir. 1979), cert. denied, 447 U.S. 905 (1080). Under Rule 104 of the Federal Rules of Evidence, the District Judge must determine whether the prosecution has

preponderance of the evidence, independent of the statement itself, that a conspiracy existed, that the co-conspirator and the defendant against whom the statement was offered were members of it, and that the statement was made during the course of and in furtherance of the conspiracy. In this matter, at this point in the trial, there is no substantial evidence to support the trial court's finding on the co-conspirator exception and allowance of the heresay testimony was prejudicial to Petitioner and requires reversal.

V

The Court should grant Certiorari to consider whether the sentences imposed by the Trial Court are improper and excessive.

The Petitioner was sentenced to five years each on Counts 1, 3 and 4 and three years on Counts 6 and 7, with all of the above to run consecutively. On the

remaining 140 counts, the Court imposed sentences of five years each to run concurrent with each other and Counts 1, 3, 4, 6 and 7.

The Indictment is set forth in Counts 2-162 by dates. Many of the counts have the same date. In fact, the prescriptions were issued at the same time, in the same place as part of a single transaction and often to the same family member. Even where there may be different patients named, all such patients were present together when all of the prescriptions were issued. It is apparent that this could be no more than one criminal undertaking (dispensing of prescriptions) for which the Petitioner should not receive multiple punishments. See United States v. Palefox, 764 F.2d 558 (1985) and Prince v. United States, 352 U.S. 322, L.Ed.2d 37, 77 S.Ct. 403 (1957). See also "Appendix D", Indictment.

Many of the counts also violate Petitioner's double jeopardy rights. The use of identical evidence to prove the same elements of the crime bars conviction thereon. Since the elements required to prove commission of the crimes of which Petitioner was convicted are the same, the consecutive sentences imposed violate the Double Jeopardy Clause. Blocklunger v. United States, 284 U.S. 299 (1932).

Also, the Court should consider under the rule of "leniency' the consecutive sentences should be vacated. Alberny v. United States, 450 U.S. 333, 339 (1981).

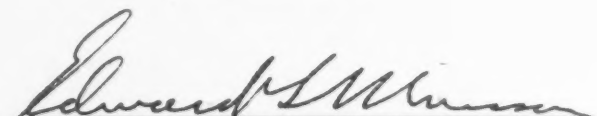
For the above reasons, the sentences of the Petitioner should be vacated.

CONCLUSION

A fair trial being effectively eliminated by the prosecutor's remarks and the trial court's failure to admonish the jury about co-defendant's pleas, by the failure of the trial court in finding a

conspiracy by independent evidence allowing co-conspirator heresay statements, and because of the insufficiency of evidence of guilt and excessiveness of sentences imposed, the convictions of Petitioner should be reversed and sentences vacated.

Respectfully submitted,
DONALD CHARLES OLSON, JR.,
D.O., PETITIONER,

BY: 

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DONALD CHARLES OLSON, JR., D.O.,

PETITIONER,

V.

UNITED STATES OF AMERICA,

RESPONDENT.

PROOF OF SERVICE

STATE OF OKLAHOMA)
) ss.
COUNTY OF CHEROKEE)

Edward L. Munson, after being duly sworn, disposes and says that pursuant to Rule 28.3 of this Court, he served the within Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit on counsels for Respondent

by enclosing a copy thereof in envelopes, first class postage prepaid, addressed to:

Solicitor General
Department of Justice
Washington, D.C. 20530
and
United States District Attorney
Eastern District of Oklahoma
333 United States Courthouse
Muskogee, Oklahoma 74401

and depositing the same in the United States mail at Tahlequah, Oklahoma on April 23, 1987.

Edward L. Munson
EDWARD L. MUNSON

Subscribed and sworn to before me this 23rd day of April, 1987.

Mary Rose Cline
NOTARY PUBLIC

My Commission Expires:
2-3-91

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	No. 85-57-CR
DONALD CHARLES OLSON, JR., D.O.,	)	
Defendant.	)	

ORDER

The court finds the defendant has been found guilty of one count of conspiracy to possess with intent to distribute without legitimate medical purpose schedule II narcotic and non-narcotic substances and one hundred forty-four (144) counts of unlawfully dispensing and causing to be dispensed to an ultimate user drug controlled substances not for a legitimate medical purpose and that he has been sentenced to seven hundred sixteen (716) years imprisonment with most of it to be served

concurrently so that the actual sentence was twenty-one (21) years.

Further, defendant was advised of his right to appeal whereupon his lawyer gave notice of his intent to appeal. Thereafter, in support of his oral motion for appeal bond counsel called only the defendant who testified that he had no animosity toward government witnesses or anyone else and he had every reason to stay in the area and not flee and that he had discussed this matter with his lawyer and they believed there were substantial questions of law and fact likely to result in reversal of his judgment and sentence or a new trial and therefore his appeal was not for the purpose of delay. Counsel cited the briefs submitted at trial.

Further, the government had few questions but objected to the release of defendant because there is no question raised which likely would result in any

relief to defendant.

It is adjudged that defendant is committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of Five (5) Years on Count 1; Five (5) Years on Count 3, to run consecutive to Count 1 and defendant to serve a special parole term of Three (3) Years; Five (5) Years on Count 4, to run consecutive to Count 3 and defendant to serve a special parole term of Three (3) Years, to run concurrent with the special parole term in Count 3; Three (3) Years on Count 6, to run consecutive to Count 4 and defendant to serve special parole term of Three (3) Years to run concurrent with special parole term in Count 4; Three (3) Years on Count 7, to run consecutive to Court 6 and defendant to serve special parole term of Three (3) Years to run concurrent with special parole term in Count 6; Five (5) years on

each Count 8, 9, 10, 11, 12, 16, 17, 19, 20, 21, 22, 23, 27, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 99, 100, 101, 102, 103, 104, 105, 106, 107, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 130, 131, 132, 133, 134, 135, 136, 137, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161 and 162 to run concurrent with each other and concurrent with Counts 1, 3, 4, 6 and 7 and defendant to serve a special parole term of Three (3) Years on each count, to run concurrent with each other and with special parole term imposed in Courts 3, 4, 6 and 7.

(FHS)

The court finds and orders that there is clear and convincing evidence that defendant is not likely to flee or pose a danger to the community but there was insufficient evidence that there is a substantial question of law or fact which can be raised in an appeal which is likely to result in reversal of the judgment and sentence or an order for a new trial. Therefore, the appeal can only be for the purpose of delay.

Defendant is therefore ordered committed.

IT IS SO ORDERED this 6 day of December, 1985.

/s/ Frank H. Seay
FRANK H. SEAY
United States District
Judge

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,	)	
Plaintiff-Appellee,	)	
v.	)	No. 85-2846
	)	(DC No. 85-57-CR)
DONALD CHARLES OLSON, JR., D.O.,	)	(E.D. Oklahoma)
Defendant-Appellant.	)	

ORDER AND JUDGMENT

Before HOLLOWAY, Chief Judge, MOORE and TACHA, Circuit Judges.

Defendant, a licensed Doctor of Osteopathy, appeals from a conviction of 144 counts of illegally dispensing drugs and 1 count of conspiracy. Dr. Olson was indicted on 1 count charging him with "conspiracy to possess controlled

substances without a legitimate purpose," pursuant to 21 U.S.C. §846, and 161 counts of illegally dispensing Schedule II controlled substances contrary to 21 U.S.C §841(a)(1). He was acquitted on 17 of the dispensing counts and convicted on the remainder. He has been sentenced to five years imprisonment on the conspiracy count and to consecutive terms of a total of sixteen years with special parole terms on the balance. After review of the record and consideration of the defendant's arguments, we affirm the convictions on all counts.

I.

Defendant was charged as a conspirator with Floyd Stephens and Al Patton, whose convictions were affirmed today in case numbers 85-2893 and 85-2907. Because the same evidence and essentially the same arguments relating to the

sufficiency of the conspiracy evidence were considered in those cases, the judgment we reached there applies equally to this case. Accordingly, the conviction on the conspiracy count must be affirmed in this matter as well.

II.

In an argument appearing more in the nature of closing remarks to a jury than an appellate presentation, defendant contends that the evidence was insufficient to convict him of the charges of illegal dispensing. He claims he had no knowledge that the recipients of his prescriptions were trading in the drugs they received, and that his prescriptions were always based upon a perceived medical need. He takes issue with the testimony of expert witnesses and maintains that his conduct was in keeping with the standards of the medical profession. Yet, he does

not state in what way the government's evidence of his guilt was deficient; he merely seems to argue that the evidence produced was lacking in sufficient credibility.

As we noted recently in United States v. Jamieson, _____ F.2d _____ (10th Cir. Nov. 26, 1986), the central issue is a charge of illegal dispensing of controlled substances is whether prescriptions were issued to an ultimate user for a legitimate medical purposes and in the usual course of professional practice. To establish those facts, the government offered witnesses who testified that Dr. Olson usually would prescribe the specific drugs requested by his patients; that a patient, May, referred to Dr. Olson others who did not have legitimate medical complaints; that May frequently saw Dr. Olson's ofice filled with people known to him as drug abusers; that office visits

preceding the issuance of prescriptions were cursory and without real examinations by the doctor; that the doctor asked patients to supply him with a medical reason to justify the issuance of a prescription; that the doctor prescribed controlled substances used to treat obesity to a user who was not obese; that the doctor told patients because "the heat was on" to be circumspect about where they filled the prescriptions and evidenced knowledge about the street price of various substances he prescribed; that the doctor was careful to switch substances when he had previously prescribed "too many" of one kind; that the doctor had changed the color of his prescriptions "to make the police earn their money." When this evidence is considered together with the testimony of the experts who reviewed all of Dr. Olson's files and concluded that Dr. Olson did not prescribe in the

charged instances for legitimate medical purposes and in the course of professional practice, there was ample evidence for the jury to consider in support of the charges. We conclude the evidence was sufficient to sustain the conviction.

III.

Defendant argues that the trial court improperly received co-conspirator hearsay without a proper determination of the existence of a conspiracy as required by United States v. Andrews, 585 F.2d 961 (10th Cir. 1978), and United States v. Peterson, 611 F.2d 1313 (10th Cir. 1979), cert. denied, 447 U.S. 905 (1980). When objection was made to the receipt of hearsay, the government requested a finding by the trial court that a conspiracy had been established. After hearing from all counsel about the state of the evidence at that point, the court

found that the government had shown "by substantial independent evidence that is is more likely than not that a conspiracy existed and the [defendant] against whom the conspirator's statement was offered [was a member] of the conspiracy . . ." At the conclusion of all the evidence, the trial court made a second finding that:

> [A]s a factual matter that the prosecution has shown by a preponderance of the evidence, independent of the statement, any hearsay statements themselves, that a conspiracy existed, that the co-conspirators, alleged co-conspirators and the defendants against whom the co-conspirators' statement were offered were members of the conspiracy and that the statements were made during the course and in the furtherance of the conspiracy.

No objections to either finding made by the court were offered by defendant.

In a rather obscure argument, defendant now makes a generalized contention that no independent evidence of a conspiracy existed at the time the first finding was made; therefore, the

procedures we established in Andrews and Peterson were not followed by the trial court. The defendant does not discuss the finding made by the court at the conclusion of all the evidence and whether that finding cured any possible Andrews error.

In United States v. Rivera, 778 F.2d 591 (10th Cir. 1985), cert. denied, 106 S.Ct. 1384 (1986), we condoned, over Andrews objections, action by a trial court almost identical to that in this case. We noted in Rivera, as here, that findings relative to the existence of a conspiracy were made without objection at the conclusion of all the evidence and said: "[W]e see no reversible error in the procedure followed and the timing of the findings." Indeed, as we understand the record in this case, the trial court did follow the desired order of proof suggested in Peterson and Andrews.

Therefore, we cannot find reversible error in the the way in which the court arrived at its findings.[1]

That leaves for consideration only the questions of whether all the evidence supports the court's findings. Given the second finding made by the court and the permissible latitude we have granted trial judges to make the Andrews findings at the conclusion of the evidence, the question of the sufficiency of the evidence is the same as we faced in Part I of this order. Having concluded the evidence was sufficient to support the conspiracy conviction, we must perforce conclude the

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[1]We have yet to hold that failure to strictly adhere to the "preferred order of proof" is reversible error. Despite the very strong direction given in United States v. Austin, 786 F.2d 986 (10th Cir. 1986), we have reversed only when the required findings were not made before the case was submitted to the jury.

evidence was sufficient to support the court's Andrews findings.[2]

IV.

Defendant summarily raises several issues urging each as a procedural error mandating reversal. We shall address each point seriatim.

A.

Defendant argues the trial court erred when it refused to grant defense motions for mistrial based upon receipt of hearsay statements. The ruling on a motion for mistrial rests in the sound discretion of the trial court, and defendant has failed utterly to demonstrate how that discretion was abused

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[2]It should be noted that we arrive at this conclusion with reluctance in view of the emphatic directions given in Austin. Yet, any other determination would have to result in a panel reversal of Rivera, and that cannot be done.

in this case. Accordingly, error cannot be found in this instance. United States v. Behrens, 689 F.2d 154 (10th Cir.), cert. denied, 459 U.S. 1088 (1982).

B.

Defendant argues the trial court erred by not instructing the jury that a pharmacist has, by federal regulation, a responsiblity for the proper filling of a prescription for controlled substances. This regulation is irrelevant to the charges, and such an instruction would have been improper. The issue presented to the jury was whether defendant had violated the law. A similar violation by someone else has not bearing on that issue. The argument is specious.

Defendant also contends the court should have instructed the jury he was a practitioner licensed to dispense controlled substances. Since there had

been a stipulation of this fact, defendant's capacity was not in issue before the jury. It is therefore perplexing at best to see why a definitional instruction was necessary, and defendant's brief does not clarify the mystery. In any event, substantially the same instruction was given by the court.

C.

The defendant argues he was prejudiced by the court's failure to grant a severance. We have dealt with the same issue in Stephens and adhere to that ruling here.

D.

Defendant contends that he was prejudiced by the trial court's refusal to ask certain questions on voir dire. Defendant has failed to establish how the trial court abused its discretion in the

formulation of the questioning; therefore, he has failed to demonstrate reversible error. Fed. R. Crim. P. 24(a). United States v. Espinosa, 771 F.2d 1382 (10th Cir.), cert. denied, 106 S.Ct. 579 (1985).

E.

Defendant contends the trial court erred by refusing to dismiss the indictment for various alleged deficiencies in the allegations. In part, we have dealt with some of the issues in Stephens, and no good purpose is served by reiteration here. Additionally, defendant contends the allegation of the time during which the conspiracy took place did not "describe with particularity a sufficient time period small enough for defendant to be able to properly defend as a supposed agreement between any of the other named defendants." Notwithstanding, the time period alleged in the indictment was that

in which the grand jury determined the conspiracy had occurred. The fact that the conspiracy allegedly took place over a period of three years does not suggest that the grand jury should have alleged a shorter period of time or that the indictment should have been dismissed. As we have noted in Stephens, the indictment here meets the test required by the Sixth Amendment.

F.

Finally, the defendant argues the sentences were excessive and that because he was guilty of only one offense, in practical terms, his double jeopardy right has been violated by the consecutive sentences.[3] Initially, it should be

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[3]Defendant makes a passing reference to the requirements of 18 U.S.C. §3553(c), but since that section is not yet effective and the sentencing guidelines to which paragraph (c) applies have not yet been adopted, the contention lacks substance.

observed that each count of dispensing described a discrete and complete criminal transaction. Thus, while defendant was guilty of a pattern of like offenses, his guilt of more than one crime is manifest. Second, the sentences imposed were within the statutory limits for each offense; therefore, they are not subject to review. United States v. Davis, 573 F.2d 1177 (10th Cir.), cert. denied, 436 U.S. 930 (1978).

AFFIRMED.

Entered for the Court

John P. Moore
Circuit Judge

APPENDIX C

JANUARY TERM - FEBRUARY 23, 1987

Before The Honorable William J. Holloway, Chief Judge, Honorable John P. Moore, and Honorable Deanell R. Tacha, Circuit Judges.

UNITED STATES OF AMERICA,	)	
Plaintiff-Appellee,	)	
vs.	)	No. 85-2846
DONALD CHARLES OLSON, JR., D.O.,	)	
Defendant-Appellant.	)	

This matter comes on for consideration of appellant's petition for rehearing filed in the captioned cause.

Upon consideration whereof, the petition for rehearing is denied.

/s/ Robert L. Hoecker,
ROBERT L. HOECKER, Clerk

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	No. 85-57-CR
DONALD CHARLES OLSON, JR., D.O.; TERRY RAY LYONS; DAVID VERNON MAY; AL PATTON; NADINE SALISBURY; THEODORE SALISBURY, a/k/a Ted Salisbury; JUANITA SARGENT, nee BROOKS; GLORIA ANN SIMON; FLOYD STEPHENS, a/k/a J.R. Stephens, a/k/a Floyd Stephens, Jr.; and RODELLA STEPHENS, Defendants.	)	

INDICTMENT

The Grand Jury Charges:

COUNT I

(21 U.S.C §846)

From on or about December, 1980, and continuing thereafter to on or about December, 30, 1983, the exact dates of which to the Grand Jury are unknown, Donald Charles Olson, Jr., D.O.; Terry Ray

Salisbury; Juanita Sargent, nee Brooks; Gloria Ann Simon; Floyd Stephens a/k/a J.R. Stephens a/k/a Floyd Stephens, Jr.; and Rodella Stephens, the defendants herein, did unlawfully, knowingly and willfully conspire and agree together and with diverse other persons known and unknown to the Grand Jury to commit offenses against, the United States, in that they conspired and agreed together to unlawfully, knowingly and willfully possess with intent to distribute without legitimate medical purpose the following Schedule II Narcotice Drug Controlled Substances and Non-Narcotic Drug Controlled Substances to-wit:

Dilaudid - Hydromophone

Biphetamine 20 mg. - Amphetamine & Dextroamphetamine

Demerol - Pethidine

Desoxyn - Methamphetamine Hydrochloride

Meperidine - Pethidine

Percoset 5 mg. - Oxycodone

Percodan - Oxycodone

Preluding 17 mg. - Phenmetrazine

Ritalin - Methyphenidate

Talwin - Pentazocine

Tuinal 200 mg. - Secobarbital

Schedule II Controlled Substances, in violation of Title 21, United States Code, Section 841(a)(1) and all in violation of Title 21, United States Code, Section 846.

1. During the later part of 1980, Floyd Stephens informed David May that Stephens had been obtaining a portion of the Dilaudid, that Stephens sold to May, from Dr. Donald Olson of Tahlequah,.

2. On May 11, 1981, David May obtained prescriptions for Ritalin, 5 mg., #40 and Percocet 5mg., #100 from Dr. Donald C. Olson in the name of Tessie Cooper. Further on May 11, 1981, David May obtained a prescription for Percodan #50 from Dr. Donald C. Olson.

COUNTS 2 THROUGH 162

(21 U.S.C. §841(a)(1) and 18 U.S.C. §2)

A) On or about the dates hereinafter listed, in the Eastern District of Oklahoma, DONALD CHARLES OLSON, JR., D.O., being a registrant authorized to dispense controlled substances for legitimate medical purposes, knowingly and intentionally did unlawfully dispense and cause to be dispensed to an ultimate user, with the following patient names, the following quantities of drug controlled substances contained in Title 21, United States Code, Section 812 and Title 21, Code of Federal Regulations, Chapter II, part 1308, as amended; said acts of dispensing and causing dispensations in each instance were not in the usual course of professional practice and were not for a legitimate medical purpose.

B) All allegations set forth in

Paragraph "A" of this Indictment are realleged and included in each of the following Counts as if fully repeated and set forth therein:

COUNT - 2; DATE - 4-26-81; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 3; DATE - 4-26-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 4; DATE - 4-29-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 5; DATE - 5-11-81; DRUG - Methylphenidate, Ritalin 5mg.; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 6; DATE - 5-11-81; DRUG - Oxycodone, Percoset 5; DOSAGE UNIT - 100; SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 7; DATE - 5-11-81; DRUG - Secobarbital, Tuinal 200 mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 8; DATE - 5-11-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 9; DATE - 5-20-81; DRUG - Phenmetrazine, Preludin 75 mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 10; DATE - 5-20-81; DRUG - Oxycodone, Percoset 5; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 11; DATE - 5-22-81; DRUG - Oxycodone, Percoset 5; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 12; DATE - 5-22-81; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 13; DATE - 5-29-81; DRUG - Phenmetrazine, Preludin 75mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 14; DATE - 5-29-81; DRUG - Phenmatrizine, Preludin 75mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Peralyn Conrad.

COUNT - 15; DATE - 6-1-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 16; DATE - 6-5-81; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 17; DATE - 6-8-81; DRUG - Oxycodone, Percoset 5; DOSAGE UNIT - 40; SCHEDULE- II; PATIENT NAME - Tessie May.

COUNT - 18; DATE - 6-10-81; DRUG - Methylphenidate, Ritalin 5; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 19; DATE - 6-15-81; DRUG - Phenmetrazine, Preludin 75mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 20; DATE - 6-15-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 21; DATE - 6-15-81; DRUG - Phenmetrazine, Preludin 75mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 22; DATE - 6-17-81; DRUG - Pethidine, Demoral 100mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 23; DATE - 6-17-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT 24; DATE - 6-22-81; DRUG - Oxycodone, Percoset 5; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 25; DATE - 6-22-81; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 26; DATE - 6-26-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 27; DATE - 7-6-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 28; DATE - 7-9-81; DRUG - Phenmetrazine, Preludin 75mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 29; DATE - 7-9-81; DRUG - Phenmetrazine, Preludin 75mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Peralyn Conrad.

COUNT - 30: DATE - 7-13-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 31; DATE - 7-14-81; DRUG -

Pehmetrazine, Preludin 75mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 32; DATE - 7-14-81; DRUG - Phenmetrazine, Preludin 75mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 33; DATE - 7-14-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 34; DATE - 7-20-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 35; DATE - 7-28-81; DRUG - Oxcycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - David May;

COUNT - 36; DATE - 7-29-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 37; DATE - 7-29-81; DRUG -

Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 38; DATE - 8-7-81; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 39; DATE - 8-7-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 40; DATE - 8-7-81; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Peralyn Conrad.

COUNT - 41; DATE - 8-7-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 42; DATE - 8-11-81; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 43; DATE - 8-11-81; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 44; DATE - 8-11-81; DRUG - Ocycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 45; DATE - 8-11-81; DRUG - Phenmetrazine, Preludin 75mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 46; DATE - 8-12-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 47; DATE - 8-25-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 48; DATE - 8-25-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 49; DATE - 8-25-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 50; DATE - 9-4-81; DRUG - Phenmetrazine, Preludin 75mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 51; DATE - 9-4-81; DRUG - Phenmetrazine, Preludin 75mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 52; DATE - 9-21-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 53; DATE - 9-21-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 54; DATE - 10-1-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 55; DATE - 10-1-81; DRUG - Phenmetrazine, Preludin 75mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 56; DATE - 10-1-81; DRUG - Phenmetrazine, Preludin 75mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 57; DATE - 10-21-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 58; DATE - 10-21-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

Count - 59; DATE - 10-21-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 60; DATE - 10-21-81; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes

Cooper.

COUNT - 61; DATE - 10-27-81; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 62; DATE - 10-27-81; DRUG - Ocycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 63; DATE - 11-17-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 64; DATE - 11-17-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 65; DATE - 11-27-81; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Davd May.

COUNT - 66; DATE - 12-8-81; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 67; DATE - 12-8-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Xerxes Cooper;

COUNT - 68; DATE - 12-8-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 69; DATE - 12-8-81; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 70; DATE - 12-8-81; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 71; DATE - 12-8-81; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 72; DATE - 1-4-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 73; DATE - 1-4-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 74; DATE - 1-4-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 75; DATE - 1-4-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 76; DATE - 1-4-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 77; DATE - 1-20-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 78; DATE - 1-20-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 79; DATE - 2-3-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40;

SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 80; DATE - 2-3-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 81; DATE - 2-3-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 82; DATE - 2-3-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 83; DATE - 2-3-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 84; DATE - 2-3-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 85; DATE - 2-3-82; DRUG - Methamphetamine Hydrochloride, Desoxyn

15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 86; DATE - 2-3-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 87; DATE - 2-11-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 88; DATE - 2-11-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE II; patient name - Glen Conrad.

COUNT - 89; DATE - 2-11-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Peralyn Conrad.

COUNT - 90; DATE - 2-26-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 91; DATE - 2-26-82; DRUG -

Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II: PATIENT NAME - Xerxes Cooper.

COUNT - 92; DATE - 2-26-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 93; DATE - 2-26-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 94; DATE - 2-26-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 95; DATE - 2-26-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 96; DATE - 2-26-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; dosage unit - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 97; DATE - 3-3-82; DRUG -

Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 98; DATE - 3-26-82; DRUG - Pethidine, Demoral 100mg.; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 99; DATE - 3-26-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 100; DATE - 3-26-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE II; PATIENT NAME - David May.

COUNT - 101; DATE - 3-26-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 102; DATE - 3-26-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Tessie

Cooper.

COUNT - 103; DATE - 3-26-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 104; DATE - 3-26-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 105; DATE - 3-26-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II: PATIENT NAME - Loretta May.

COUNT - 106; DATE - 3-26-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 107; DATE - 3-26-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 108; DATE - 4-5-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 109; DATE - 4-7-82; DRUG - Pethidine, Demoral 100mg.; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 110; DATE - 4-16-82; DRUG - Pethidine, Mepridine Fortis; DOSAGE UNIT - 24; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 111; DATE - 4-16-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 112; DATE - 4-19-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 113; DATE - 4-19-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 114; DATE - 4-19-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT -

30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 115; DATE - 4-19-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 116; DATE - 4-19-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 117; DATE - 4-19-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 118; DATE - 4-19-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 119; DATE - 5-13-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 120; DATE - 5-19-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40;

SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 121; DATE - 5-19-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 122; DATE - 5-19-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 123; DATE - 5-19-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 124; DATE - 5-19-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 125; DATE - 5-19-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 126; DATE - 5-19-82; DRUG -

Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 127; DATE - 5-19-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 128; DATE - 5-28-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 129; DATE - 6-16-82; DRUG - Methylphenidate, Ritalin 5mg.; DOSAGE UNIT - 50; SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 130; DATE - 6-16-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Tessie Cooper.

COUNT - 131; DATE - 6-16-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 132; DATE - 6-16-82; DRUG -

Oxycodone, Percodan; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Xerxes Cooper.

COUNT - 133; DATE - 6-16-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 134; DATE - 6-16-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 135; DATE - 6-16-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 136; DATE - 6-16-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 137; DATE - 6-16-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 138; DATE - 8-8-82; DRUG -

Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 139; DATE - 8-6-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 140; DATE - 8-13-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 141; DATE - 8-13-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 142; DATE - 8-13-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Peralyn Conrad.

COUNT - 143; DATE - 8-13-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 144; DATE - 8-13-82; DRUG -

Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 145; DATE - 9-14-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 146; DATE - 9-14-82; DRUG - Pethidine, Meperdine; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 147; DATE - 9-14-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Peralyn Conrad.

COUNT - 148; DATE - 9-14-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 149; DATE - 9-14-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 150; DATE - 9-14-82; DRUG - Pethidine, Meperidine 100mg.; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 151; DATE - 9-14-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 152; DATE - 10-5-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 153; DATE - 10-5-82; DRUG - Pethidine, Meperidine 100mg.; DOSAGE UNIT - 40; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 154; DATE - 10-5-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - David May.

COUNT - 155; DATE - 10-5-82; DRUG - Oxycodone, Percodan; DOSAGE UNIT - 40;

SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 156; DATE - 10-5-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Loretta May.

COUNT - 157; DATE - 10-18-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 158; DATE - 10-18-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Peralyn Conrad.

COUNT - 159; DATE - 10-18-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Peralyn Conrad.

COUNT - 160; DATE - 11-17-82; DRUG - Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Glen Conrad.

COUNT - 161; DATE - 11-17-82; DRUG -

Methamphetamine Hydrochloride, Desoxyn 15mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Peralyn Conrad.

COUNT - 162; DATE - 11-17-82; DRUG - Secobarbital, Tuinal 200mg.; DOSAGE UNIT - 30; SCHEDULE - II; PATIENT NAME - Peralyn Conrad.

All in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

A TRUE BILL:

/s/ (illegible) L. Johnson
GRAND JURY FOREMAN

ROGER HILFIGER
United States Attorney

/s/ Paul G. Hess
PAUL G. HESS
Assistant United States Attorney

APPENDIX E

CONSTITUTIONAL PROVISIONS

This case involves the Sixth Amendment to the United States Constitution which provides, in relevant part:

> "In all criminal prosecutions, the accused shall enjoy the right to have speedy and public trial, by impartial jury of the state and district wherein the crime shall have been committed . . ."

The Fifth Amendment to the Constitution of the United States provides, in relevant part:

> ". . .Nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law . . ."

This case involves provisions of the United States Statutues:

> "21 U.S.C. §846. Attempt and Conspiracy: Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy."

21 U.S.C. §841 (a) (1). "Except as

authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally -- to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance,"

21 U.S.C §841 (B). "In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A) or (C), such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than $125,000.00, or both."